

VOL 2 643**CR-02-2104**

COURT OF CRIMINAL APPEALS NO.

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMACIRCUIT COURT NO. CC 2002-1417CIRCUIT JUDGE HOBBSType of Conviction / Order Appealed From: INTENTIONAL MURDERSentence Imposed: LIFE WITHOUT PAROLEDefendant Indigent: YES NO

DARRYL JEVON JOYCE

NAME OF APPELLANT

AIMEE C. SMITH <small>(Appellant's Attorney)</small>	<u>(334) 264-6466</u>
640 S. MCDOUNOUGH STREET	<small>(Telephone No.)</small>

<small>(Address)</small>	MONTGOMERY	AL	36104
<small>(City)</small>	<small>(State)</small>	<small>(Zip Code)</small>	

V.

STATE OF ALABAMA

(State represented by Attorney General)

NAME OF APPELLEE

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)

Part 2 of 5

EXHIBIT

Tables:

A

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR MONTGOMERY COUNTY
MONTGOMERY, ALABAMA

STATE OF ALABAMA,
Plaintiff,
VS.
DARRYL J. JOYCE,
Defendant

COPY

INDEX OF PROCEEDINGS

TRIAL	Page	8
SENTENCING	Page	376



1
2 IN THE CIRCUIT COURT OF
3 MONTGOMERY COUNTY, ALABAMA
4

5 STATE OF ALABAMA,)
6 Plaintiff,)
7 VS.) CC NO. 02-1417
8 DARRYL J. JOYCE,)
9 Defendant.)

10 ----- /
11
12 INDEX TO REPORTER'S TRANSCRIPT ON APPEAL

<u>EXHIBITS</u>	<u>ADMITTED</u>
SX 1 - Photograph	186
SX 2 - Photograph	186
SX 2A - Photograph	193
SX 3 - Photograph	186
SX 4 - Photograph	186
SX 5 - Photograph	186
SX 6 - Photograph	145
SX 7 - Photograph	138
SX 8 - Photograph	252
SX 9 - Photograph	144
SX 10 - Photograph	252
SX 11 - Photograph	252

1	SX 12 - Photograph	252
2	SX 13 - Photograph	252
3	SX 14 - Photograph	252
4	SX 15 - Gun Casing	240
5	SX 16 - Gun Casing	240
6	SX 17 - Gun Casing	240
7	SX 20 - Forensic Science	297
8	Documents	
9	SX 20A - Dr. Bristol's CV	295
10	SX 21 - Weapon	319
11	SX 27 - Diagram of Smiley Court	249
12	SX 27A - Police Dept. Document	249
13	SX 29 - Photocopy of James	144
14	Friendly	
15	SX 31 - Photocopy of Projectile	284
16		
17	DX1 - Photo lineup	319
18		
19		
20		
21		
22		
23		
24		
25		

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR MONTGOMERY COUNTY
MONTGOMERY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

CRIMINAL ACTION

DARRYL J. JOYCE, NO. 02-1417

Defendant.

TRANSCRIPT OF PROCEEDINGS
JULY 21 - 22, 2003
MONTGOMERY COUNTY COURTHOUSE
COURTROOM 3-A

BEFORE: THE HON. TRUMAN M. HOBBS, JR.

CIRCUIT JUDGE

APPEARANCES

FOR THE STATE:

WILLIAM POWELL, ESQUIRE
VERNETTA PERKINS, ESQUIRE
DEPUTY DISTRICT ATTORNEY
MONTGOMERY, ALABAMA

FOR THE DEFENDANT:

J. WILEY HARTLEY, ESQUIRE
MONTGOMERY, ALABAMA

JUDY E. SHELTON
OFFICIAL COURT REPORTER

INDEX

ERIC STEWART

Direct Exam. by Mr. Powell . . .	77
Cross Exam. by Mr. Hartley . . .	118
Redirect Exam. by Mr. Powell . . .	142
Recross Exam. by Mr. Hartley . . .	145

J. MACKEY

Direct Exam. by Mr. Powell . . . 148

JOHNNY OSBORNE

Direct Exam. by Mr. Powell . . .	159
Cross Exam. by Mr. Hartley . . .	174
Redirect Exam. by Mr. Powell . . .	179

C. J. GRANDISON

Direct Exam. by Mr. Powell . . . 182

BRIAN OSBORNE

Direct Exam. by Mr. Powell . . .	199
Cross Exam. by Mr. Hartley . . .	213
Redirect Exam. by Mr. Powell . . .	220

1 Recross Exam. by Mr. Hartley . . . 222
2 Redirect Exam. by Mr. Powell . . . 226
3

4 E.E. HOWTON,
5 Direct Exam. by Mr. Powell . . . 231
6 Cross Exam. by Mr. Hartley . . . 256
7 Redirect Exam. by Mr. Powell . . . 274
8 Recross Exam. by Mr. Hartley . . . 277
9 Redirect Exam. by Mr. Powell . . . 278
10 Recross Exam. by Mr. Hartley . . . 278
11

12 KATHERINE RICHART
13 Direct Exam. by Mr. Powell . . . 279
14

15 DR. BEN BRISTOL
16 Direct Exam. by Mr. Powell . . . 292
17

18 NICOLE JUDKINS
19 Direct Exam. by Mr. Powell . . . 305
20 Cross Exam. by Mr. Hartley . . . 311
21

22 E.E. HOWTON,
23 Direct Exam. by Mr. Hartley . . . 320
24 Cross Exam. by Mr. Powell . . . 323
25 Redirect Exam. by Mr. Hartley . . . 325

1	Recross Exam. by Mr. Powell . . .	326
2	Redirect Exam. by Mr. Hartley . . .	327
3		
4		
5		
6	COURT'S ORAL CHARGE TO JURY . . .	361
7	VERDICT.	372
8	SENTENCING.	376
9	REPORTER'S CERTIFICATE.	398
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1

2

* * * * *

3

4

5

6

7

8

THE COURT: It's still morning so good morning everybody. I told you I'd be seeing some of you shortly. We are about to start the selection of the jury in the case of State of Alabama versus Darryl Joyce.

9

10

11

12

13

14

15

16

17

18

19

Mr. Joyce is charged with the crime of murder in this case. I'm going to tell you that because in a little bit I will be asking if any of you know anything about the facts of this case.

20

21

22

23

24

25

Before I do that, I want to introduce to y'all everybody that is seated at the table here. Representing the State of Alabama are Deputy District Attorneys Will Powell and Ms. Vernetta Perkins.

MR. POWELL: Good morning.

MS. PERKINS: Good morning.

THE COURT: Ms. Perkins, who is --

MR. POWELL: This is Ms. Sally Friendly, Judge. She is the victim's

1 mother. She will be seated with us at
2 counsel's table this week.

3 THE COURT: Okay. Ms. Sally
4 Friendly. Over here is Mr. Wiley
5 Hartley. He is an attorney for the
6 defendant. Seated with him is Mr.
7 Joyce. I have introduced everybody up
8 here to you.

9 What I'm going to do now is ask
10 the clerk to call the roll. When he
11 calls your name, if you would please
12 stand up, tell us what you do for a
13 living, what your spouse does for a
14 living. If you are retired, tell us what
15 you did before you retired. And if your
16 spouse retired, what your spouse did
17 before he or she retired. Okay.

18 (At which time the roll of the
19 venire was called.)

20 THE COURT: Okay. I'm going to
21 ask everybody a few questions. If you
22 need to respond to a question, if you
23 would stand up and repeat your name for
24 us and tell us whatever information you
25 need to give us.

1 If I ask a question that refers
2 to family members, I'm referring to your
3 spouse, your children, your
4 grandchildren, your parents,
5 grandparents, brothers and sisters. Let
6 me say up front, we are not trying to
7 delve into your personal life. We are
8 not here to embarrass anybody. If you
9 need to make a response that you find
10 would be embarrassing to say in front of
11 a room full of strangers, that's fine.

12 When we ask everybody to go
13 back to the jury assembly room, you just
14 stay behind and share with us whatever
15 information you think you need to give
16 us.

17 As I said earlier, Mr. Joyce is
18 seated here. Are any of y'all related to
19 him by blood or marriage or anyway
20 personally acquainted with Mr. Joyce?
21 Are any of y'all related by blood or
22 marriage or personally acquainted with
23 his attorney Wiley Hartley who is seated
24 here? Have any of y'all ever been to his
25 office for any reason?

1 The State of Alabama is
2 represented by Deputy District Attorney
3 Will Powell and Vernetta Perkins. Our
4 District Attorney is Ellen Brooks. Are
5 any of y'all related by blood or marriage
6 to any of those folks or personally
7 acquainted with them for any reason?
8 Yes, ma'am?

9 PROSPECTIVE JUROR: My name is
10 Sarah Andrews. I'm acquainted with Ellen
11 Brooks.

12 THE COURT: How are you
13 acquainted, Ms. Andrews?

14 PROSPECTIVE JUROR: I handled
15 her insurance when I was with an
16 insurance company.

17 THE COURT: Other than -- was
18 she personally your client?

19 PROSPECTIVE JUROR: Well, no.
20 She was just one of our clients.

21 THE COURT: Did you know her
22 personally at all?

23 PROSPECTIVE JUROR: I knew her
24 personally, yes.

25 THE COURT: Just to speak to

1 her?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: She has never been
4 to your house?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Y'all don't go eat
7 meals together or anything like that?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Thank you, Ms.
10 Andrews. Anybody else personally
11 acquainted with any of the District
12 Attorneys or Ms. Brooks? Yes, ma'am?

13 PROSPECTIVE JUROR: I know
14 Ellen Brooks. We served on the American
15 Cancer Society Board together. We don't
16 go to each other's houses or anything
17 like that.

18 MS. PERKINS: What is your
19 name?

20 PROSPECTIVE JUROR: Lisa
21 Beers.

22 THE COURT: And there was one
23 more. Yes, ma'am?

24 PROSPECTIVE JUROR: I'm Connie
25 Colvin and it's just kind of a social

1 contact but not like to each other's home
2 or anything.

3 THE COURT: Y'all know her to
4 speak to her sort of thing?

5 PROSPECTIVE JUROR: Right.

6 THE COURT: Would the fact that
7 y'all know Ms. Brooks personally, would
8 that affect your decision in this case
9 one way or the other?

10 PROSPECTIVE JUROR: No, it
11 wouldn't.

12 THE COURT: Y'all could call it
13 right down the middle?

14 PROSPECTIVE JUROR: I don't
15 believe it would be a problem.

16 MR. HARTLEY: Would you ask
17 those questions of Mr. Bledsoe. I
18 believe his wife works in the DA's
19 office. Would you ask him the same
20 line.

21 THE COURT: Mr. Bledsoe, your
22 wife works in the DA's office?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Are you personally
25 acquainted with Ms. Brooks?

1 PROSPECTIVE JUROR: I have only
2 spoken to her. We are not personally
3 acquainted.

9 PROSPECTIVE JUROR: I don't
10 believe it would.

11 THE COURT: You still think you
12 could call it right down the middle?

13 PROSPECTIVE JUROR: I'll do my
14 best.

15 THE COURT: Okay.

16 MR. HARTLEY: Thank, you,
17 Judge.

1 Friendly's, anybody?

2 I'm going to let y'all ask
3 about the witnesses because all I have
4 got up here is a lengthy list. I don't
5 know who you are actually going to call.
6 So I will let y'all hash that out.

7 Anyone here or any of your
8 family been employed by the Montgomery
9 Police Department or any other law
10 enforcement agency? Yes, Ms. Andrews?

11 PROSPECTIVE JUROR: My son is a
12 DEA instructor at Quantico.

13 THE COURT: Thank you. Anybody
14 else?

15 PROSPECTIVE JUROR: I have a
16 police officer residing with me on a
17 temporary basis. He is going through a
18 divorce. It is a nephew by a previous
19 marriage.

20 THE COURT: And your name is,
21 sir?

22 PROSPECTIVE JUROR: Durden.

23 THE COURT: Mr. Durden, thank
24 you.

25 PROSPECTIVE JUROR: He is a

1 motorcycle officer.

2 THE COURT: Okay. Yes, sir?

3 PROSPECTIVE JUROR: I worked as
4 a reserve deputy sheriff in Lee County
5 for about eight years.

6 THE COURT: And your name
7 again?

8 PROSPECTIVE JUROR: Eubanks.

9 THE COURT: Mr. Eubanks, thank
10 you. Other than Mr. Bedsole, anybody
11 here have a family member that works in
12 the DA's office? Ever been employed --
13 has anybody in your immediate family ever
14 been employed with the District
15 Attorney's office? Anybody here have an
16 interest -- I'm sorry, ma'am?

17 PROSPECTIVE JUROR: Just
18 friends, a neighbor?

19 THE COURT: Well, family
20 members.

21 PROSPECTIVE JUROR: No. A
22 close friend.

23 THE COURT: Anybody here -- I'm
24 sorry. Yes, sir?

25 PROSPECTIVE JUROR: Yes. Ray

1 Caudill. I'm in that volunteer program
2 for the Montgomery police. I don't know
3 that that has an impact here or not.

4 THE COURT: You just -- you
5 fill in --

6 PROSPECTIVE JUROR: Yes. We
7 patrol special events and I'm doing some
8 work down at the crime scene laboratory.

9 THE COURT: Okay. Thank you,
10 sir. Anybody else? Anybody here have an
11 interest in the outcome of this case
12 either way, either for a conviction or
13 for acquittal? Anybody here for whatever
14 reason just doesn't think you can be fair
15 to one side or the other?

16 In other words, is there
17 anybody here that just doesn't think that
18 for whatever reason they can't call it
19 right down the middle, be fair to
20 everybody in this case?

21 This is one of those questions
22 that could cause somebody some
23 embarrassment. If you want to wait until
24 we finish with the questions, that would
25 be fine with me.

1 Does anybody have anyone in
2 your immediate family who has been
3 charged with an offense of murder within
4 the last twelve months? Okay. I will
5 let the attorneys ask some questions
6 now.

7 MR. POWELL: Good morning.

8 PROSPECTIVE JURORS: Good
9 morning.

10 MR. POWELL: Again, my name is
11 Will Powell. Before we go any further,
12 now that we have had an opportunity to be
13 in here together and observe one another,
14 I want to ask now that y'all have had an
15 opportunity to see Ms. Friendly, does
16 anyone recognize her, Ms. Sally
17 Friendly? They live over off the
18 Boulevard. Okay.

19 I want to talk about the
20 Friendlys. This is James Friendly's
21 brother, Kevin. Stand up Kevin. Does
22 anyone recognize Kevin? Okay. Have a
23 seat.

24 Now the victim in this case,
25 James Friendly, also went by the name of

1 Boo. Does anyone recognize him with that
2 additional piece of information? And
3 along the same lines, the defendant is
4 known also by the name of Poncho or
5 Puncho or even Willie Faulk.

6 With that additional
7 information does anyone here know or
8 think they may have heard of the
9 defendant or the victim? Okay.

10 Now, stand up Detective
11 Howton. This is Detective Gino Howton
12 with the Montgomery Police Department,
13 does anyone know Detective Howton?

14 Okay. Thank you. Some other
15 names: Two brothers, Johnny Osborne and
16 Brian Osborne. Does anybody know them or
17 think they might? Another individual
18 lives over in Smiley Court by the name of
19 Eric Stewart, goes by the name of
20 Rabbit. Anybody know Mr. Stewart?

21 PROSPECTIVE JUROR: I know Mr.
22 Stewart.

23 MR. POWELL: You know Mr.
24 Stewart? How do you know him without
25 going --

1 PROSPECTIVE JUROR: I was
2 married to his family.

3 MR. POWELL: You were married
4 to that family at one time. And what is
5 your name, ma'am?

6 PROSPECTIVE JUROR: Ella Boyd.

7 MR. POWELL: Ella Boyd. Thank
8 you, Ms. Boyd. Anyone other than Ms.
9 Boyd know of Mr. Stewart, or Rabbit, of
10 that family? Okay.

11 One of our forensic experts
12 that did the firearms analysis is Kathy
13 or Katherine Richart with the Department
14 of Forensic Science. Is anyone familiar
15 with Ms. Richart?

16 The medical examiner that
17 looked at Mr. Friendly's body that
18 performed the autopsy is Ben Bristol, Dr.
19 Ben Bristol. Does anyone know him?

20 One of the patrol officers is
21 M.T. McCaskill and J. Mackey. Does
22 anyone know them? The patrol supervisor
23 at the scene was R. Wallace. Anybody
24 know Officer Wallace?

25 PROSPECTIVE JUROR: Is that

1 Richard Wallace?

2 MR. POWELL: I'm not sure what
3 his name is. All I have is an initial.
4 I have only met him a couple times.

5 OFFICER HOWTON: That's
6 Richard.

7 MR. POWELL: Is that him,
8 Gino? It is? Yes, ma'am. What is your
9 name?

10 PROSPECTIVE JUROR: Sarah
11 Andrews.

12 MR. POWELL: Now Ms. Andrews,
13 how do you know Mr. Wallace?

14 PROSPECTIVE JUROR: He was a
15 friend of my son's and they grew up
16 together.

17 MR. POWELL: So you know him
18 pretty well. Would the fact that Officer
19 Wallace was the supervising patrol
20 officer at this crime scene affect your
21 opinion of the case one way or the
22 other?

23 PROSPECTIVE JUROR: No.

24 MR. POWELL: You believe you
25 could sit and impartially hear both the

1 state and the defendant's evidence and
2 judge this in a fair and impartial
3 manner?

4 PROSPECTIVE JUROR: Yes.

5 MR. POWELL: Now the evidence
6 technician that is involved in this case
7 is Brian Jurkofsky. Is anyone familiar
8 with Detective Jurkofsky? Another
9 detective that worked the scene was a
10 Detective J.W. Haynie and Detective C.J.
11 Grandison. Is anyone familiar with
12 either one of those detectives?

13 Now before I go into this next
14 set of witnesses, let me ask you this
15 question. This happened over in Smiley
16 Court. Who all knows where Smiley Court
17 is? Okay.

18 Specifically, it happened over
19 in the 400 block or 4000 block of Marlyn
20 Street. A lady over there was having a
21 party at her residence and the shooting
22 occurred at about 11:30 that night.

23 Obviously, it was a party so
24 there were a whole bunch of people
25 there. We are not going to call all of

1 them as witnesses, not everybody saw what
2 happened. All right? But now just -- is
3 anyone familiar with specifically 4000-A
4 over on Marlyn Court? Yes, ma'am?

5 PROSPECTIVE JUROR: Ella Boyd.

6 MR. POWELL: Ms. Boyd. Anyone
7 other than Ms. Boyd? The lady that lived
8 there at the time, her name was Nicole
9 Judkins. Do you know her? All right,
10 Ms. Boyd. Anyone other than Ms. Boyd?

11 At the time she was having a
12 birthday party for an individual named
13 Christopher McQueen. Does anyone know
14 Mr. McQueen? Besides Ms. Boyd.

15 Mr. McQueen went by the name of
16 Flip if that helps anybody out. It was
17 Flip's birthday, and Ms. Judkins was
18 having a party for him. Some other
19 individuals at the party whose names you
20 might hear are Bryant Thomas. Are you
21 familiar with him?

22 PROSPECTIVE JUROR: No.

23 MR. POWELL: Also goes by B.T.
24 Another person at the party was Antwan
25 Giles. Anyone know him? Another

1 individual named Darryl Foggy. Also goes
2 by the name D. Anyone familiar with that
3 name? The lady that lived across the
4 street, her name was Amy Albright. Her
5 name may come up in this.

6 Just because I'm reading all
7 these names out doesn't necessarily mean
8 all these people are going to be called
9 as witnesses. It's just these are the
10 names you are going to hear most
11 frequently throughout the course of the
12 trial. And if any of you know them, we
13 need to ask some questions.

14 Ms. Boyd, what we are going to
15 do, after all the questions are over
16 with, if you will just stay back instead
17 of going through all these individually
18 with everyone here.

19 Now with what I have said so
20 far with the names, the location of
21 Smiley Court, with the birthday party,
22 has anyone heard or read anything in the
23 paper or heard anything on television
24 about this shooting that occurred last
25 year in February?

1 Ms. Boyd has heard this
2 before. She has got a few more details.
3 Anyone else? Okay. Now, I just have a
4 few more follow-up questions. First off,
5 this is -- obviously, it was a birthday
6 party. There were lots of people
7 around. They were doing things that
8 happen at a birthday party over in Smiley
9 Court. There was a lot of drinking going
10 on. There is going to be some instances
11 where people were using drugs; sometimes
12 marijuana, sometimes cocaine.

13 Is there anyone who just is
14 going to automatically knee-jerk reaction
15 exclude somebody's testimony simply
16 because alcohol or drugs are involved?
17 Okay. So I'm taking by no one answering
18 that question yes, you are at least going
19 to listen to the folks that testify and
20 hear what they have to say before you
21 reach any kind of opinion on whether or
22 not they were too drunk or too high or
23 too stoned or whatever to see what they
24 may have seen because, again, this is at
25 a party. It is not just going to be this

1 witness or that witness. Most of the
2 witnesses in this case are going -- were
3 at the party on Friday or Saturday night
4 at 11:30 at night. It is the kind of
5 case we got. That's what we are dealing
6 with.

Now, I looked at some of your
questionnaires. How many of y'all watch
crime shows like CSI and that kind of
stuff? Just about everybody. Does

1 everyone understand that the law on
2 television is a whole lot different than
3 what Judge Hobbs is going to tell you
4 from the bench? Does everybody
5 understand that? And that what they do
6 on CSI is television and that doesn't
7 have a whole lot to do with reality.
8 Does everybody understand that?

9 Now there were some forensics
10 done in this case. There were some shell
11 casings that were analyzed. There was an
12 autopsy that was done. But pretty much
13 when you boil this down, it's going to
14 come down to the witnesses, who saw who
15 do what. That's important.

16 MR. HARTLEY: Judge, I
17 appreciate Mr. Powell's explanation to
18 the jury but this is hardly in the form
19 of a question to the jury.

20 THE COURT: If you have got a
21 question, Mr. Powell, let's get to it.

22 MR. POWELL: And my question
23 is: Is there anyone who is going to be
24 hung up on what they have seen on
25 television or asking questions, well, I

1 saw this on television, why couldn't they
2 do that back in the jury room as opposed
3 to hearing the evidence and listening to
4 the law as the Judge reads it? So
5 everybody can agree that you will decide
6 the case based on what you hear in the
7 courtroom, not what you may or may not
8 have seen on television. Okay.

9 Now, my next question: Is
10 there anybody in here who just doesn't
11 like cops? Just decided, you know, you
12 heard bad stories or whatever. Okay.
13 Got a traffic ticket and you didn't think
14 you were speeding and he gave it to you
15 anyway. You couldn't get out of it,
16 anything like that?

17 On the other hand, is there
18 anyone who just because someone has a
19 badge and wears a police uniform is going
20 to believe that person more than you
21 would, say, a civilian witness? Anyone
22 put more emphasis on a police officer's
23 testimony simply because they are a sworn
24 officer of the law? Okay.

25 So everybody can pretty much

1 agree to look at the witnesses and judge
2 them based on what you see in this
3 courtroom here today? All right.
4 Because if there is -- if anybody is
5 bringing anything to court with them
6 today, this is the only time we have to
7 ask about it and find out. Not that it
8 is bad. We all have our opinions. We
9 all have our experiences. That's what
10 makes the system work because we put
11 twelve people over there and they can all
12 put their minds together and judge this
13 evidence and come out with the right
14 verdict in this case. Okay?

15 Now speaking of that, as the
16 State of Alabama, it is our job to prove
17 to the twelve people that get selected
18 for that jury that this man is guilty
19 beyond a reasonable doubt. Has anybody
20 heard that term before, reasonable
21 doubt? The Judge is going to explain it
22 to you.

23 But as Mr. Joyce sits in this
24 courtroom right now, he is presumed
25 innocent. It is our job to put forth

1 evidence and testimony and exhibits and
2 witnesses to prove he did what we say he
3 did. Okay?

4 Now here is my question: Is
5 there anyone that is going to require the
6 State of Alabama to remove all doubt from
7 this case? That may be kind of a
8 convoluted question. Let me clarify
9 that. I'm not saying you are going to
10 have a doubt about this or about that
11 necessarily as far as what happened but,
12 for example, you may have a question in
13 your mind, you know, where did this come
14 from or what about that?

15 If you simply have a question
16 in your mind that is not related to the
17 murder charge, do y'all understand the
18 difference between having an unanswered
19 question in the case and the State not
20 meeting its burden beyond a reasonable
21 doubt? Does that make sense? I'm
22 getting confused here and I'm standing up
23 here talking about it.

24 We are not required to answer
25 every single possible question you may

1 have about that party that night and who
2 was where and --

3 MR. HARTLEY: Judge, I think
4 this is getting very far into the state
5 of the evidence at the close of the case
6 as opposed to questioning these jurors as
7 to their --

8 THE COURT: Will, let's wrap it
9 up.

10 MR. POWELL: So everybody
11 agrees that there's a difference between
12 all doubt and reasonable doubt. Okay.

13 Ms. Boyd, if you will stay
14 after, we'll follow up. If there is
15 anybody else based on any of the
16 questions I've asked that wants to stay
17 afterwards or because of any of the
18 responses on the questionnaires or the
19 supplemental questionnaires, just feel
20 free to stay behind afterwards if you
21 want to talk to us individually. Thank
22 you.

23 THE COURT: Mr. Hartley.

24 MR. HARTLEY: Thank you,
25 Judge. Good morning. I think y'all have

1 been asked probably a hundred questions
2 in the last few minutes. So basically I
3 think they have exhausted most of the
4 topics but I do have a two-prong
5 question. The easy one, I think, would
6 be first.

7 I have read your questionnaires
8 and only a few of you but -- maybe three
9 or four or five indicated on the
10 questionnaire that there might be some
11 conflict with your ability to serve in
12 the trial this week. I think maybe
13 either for personal reasons or for
14 scheduling matters or something like
15 that. I invite you to stay behind if you
16 need to to resolve that because I would
17 like to ask if anybody has got a problem
18 with serving on the jury of this trial,
19 it might start today and go, we think,
20 into late tomorrow, Judge? Is that what
21 we think?

22 THE COURT: It better be over
23 late tomorrow.

24 MR. HARTLEY: Okay. I realize
25 that some of your responses indicate that

1 there might be some issue with you
2 serving on the jury. I invite you to
3 stay behind or either tell us right now
4 if you have got a problem, if you want
5 the judge to resolve it.

6 Then in a sort of related type
7 question, both of in the questionnaire
8 and the supplemental questionnaire, these
9 -- each of those have questions
10 pertaining to whether you or family
11 members have been victims of crimes or
12 have somehow been involved in a crime.

13 Again, I found on there
14 positive -- or yes type responses on
15 probably anywhere from a third to half of
16 the questionnaires. I ask this of all of
17 you, particularly of people who have
18 family members or in some way connected
19 to a serious crime like murder or
20 manslaughter or a violent crime.

21 If the case were real, real
22 close on the evidence at the close of the
23 case, the defense and the state had just
24 -- almost a tie or almost a match, is
25 there anything in your personal

1 experience about your having been either
2 connected to somebody who was involved in
3 a crime or the victim of a crime, if it
4 would sway your vote on the case if you
5 -- if your state of mind or your
6 existence is such that that fact might
7 affect your verdict in this case, I ask
8 you to stay behind and tell the Judge
9 about it because some of you have had
10 family members or somehow were connected
11 to very serious crimes. So I ask you to
12 stay with us if y'all meet either one of
13 those; one, you got a problem sitting on
14 the case for scheduling reasons or
15 personal reasons, or if you think that
16 something has happened in your life that
17 might affect your verdict. That's all I
18 have.

19 THE COURT: Okay. Thank you.
20 Ladies and gentlemen, we are going to
21 start the selection of the jury. I don't
22 think y'all need to sit in here and watch
23 us do that. So I'm going to let y'all go
24 back to the jury assembly room. If you
25 would, if you need to respond to any of

1 the questions and you need to stay
2 behind, just do so.

3 Ms. Boyd, I know they have
4 asked that you stay behind. You are
5 probably upset that you didn't get
6 invited to the party to begin with. It
7 seems like you know everybody that was
8 there anyway.

9 If you would, just go on back
10 to the jury assembly room. Don't break
11 for lunch just yet. This will take us
12 probably about thirty minutes. Then
13 we'll bring the jurors back in.

14 I will go ahead and tell you,
15 if you are not selected for the jury, you
16 are dismissed for the remainder of the
17 day. Please call the code-a-phone number
18 tonight so I can give you a little bit of
19 good news here today. If you would go
20 back to the jury assembly room. Thank
21 you.

22 (The following proceedings were
23 held outside the presence of the jury
24 venire.)

25 MS. PERKINS: Judge, we have

1 three people standing.

2 THE COURT: Yes, sir?

3 PROSPECTIVE JUROR: All I
4 wanted to do is clarify I mentioned that
5 I was working over at the crime scene as
6 a volunteer. All I'm doing over there
7 -- and I have been there a total of six
8 hours. All I'm doing over there is
9 inputting some fairly old information on
10 weapons into the computer.

11 You mentioned some names and I
12 got some looks. I don't know the names
13 of the people over there.

14 MR. POWELL: Yes, sir.

15 PROSPECTIVE JUROR: I just
16 wanted to clarify that.

17 THE COURT: Okay. Thank you,
18 sir. Appreciate you sharing that with
19 us. Yes, ma'am?

20 PROSPECTIVE JUROR: You said
21 something about if you had a family
22 member or something that was involved in
23 a crime.

24 THE COURT: Yes, ma'am.

25 PROSPECTIVE JUROR: It has been

1 a lot of years and the person is deceased
2 that was involved in the crime. So --

3 MR. POWELL: If you don't mind
4 me asking, what happened?

5 PROSPECTIVE JUROR: Well, it
6 was my father. He shot somebody, I
7 guess. So I was told. I wasn't here.

8 MR. POWELL: Yes, ma'am. Is
9 there anything about that incident that
10 would make you go for or against one side
11 or the other?

12 PROSPECTIVE JUROR: No.

13 MR. HARTLEY: What is your name
14 again?

15 PROSPECTIVE JUROR: Bailey,
16 Myree.

17 MR. HARTLEY: Yes, ma'am.

18 PROSPECTIVE JUROR: I have
19 another question. I don't know if this
20 is relevant or not but this young lady
21 here, is she involved in this crime or
22 something? I notice she's been watching
23 me all the time so I was wondering -- do
24 you know me or do I know you? I don't
25 think I know you.

1 UNKNOWN WITNESS: I don't think
2 I do.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR: I just
5 wanted to clear that up.

6 THE COURT: Any followup?

7 MR. POWELL: The State doesn't
8 have any, Judge.

9 THE COURT: Thank you, ma'am.

10 Appreciate it. What was her name?

11 MR. DARNIELLE: Bailey, Myree
12 Bailey.

13 THE COURT: Anybody have any
14 followup for Ms. Boyd?

15 MR. POWELL: Yes, ma'am. Ms.
16 Boyd, basically, what have you heard
17 about the incident? It sounds like you
18 were pretty familiar with what happened
19 out there that night.

20 PROSPECTIVE JUROR: I am. My
21 son was out there.

22 THE COURT: What was your
23 son --

24 PROSPECTIVE JUROR: Flip is his
25 uncle. They talked about it.

1 MR. POWELL: What was your
2 son's name?

3 PROSPECTIVE JUROR: Willie.

4 MR. POWELL: Willie?

5 PROSPECTIVE JUROR: He came out
6 there after it happened. So -- and they
7 told him about it and they talked to him
8 about it.

9 MR. POWELL: I don't have any
10 followup, Judge.

11 MR. HARTLEY: Let's approach
12 the bench. Judge, I think we need to try
13 to get a juror which basically has an
14 independent mind. I think we have to be
15 real careful because all of these
16 questions --

17 MR. POWELL: I don't want
18 anybody who has personal knowledge like
19 that being on the jury.

20 THE COURT: So we agree?

21 MS. PERKINS: Strike for cause.

22 THE COURT: Ms. Boyd, thank you
23 so much. If you will go back to the jury
24 assembly room. I can go ahead and tell
25 you, you are released for the rest of the

1 day.

2 PROSPECTIVE JUROR: I can go
3 home?

4 THE COURT: Call the
5 code-a-phone tonight, ma'am.

6 PROSPECTIVE JUROR: Thank you.

7 MR. POWELL: I noticed this
8 when I was going over the jury panels but
9 I forgot because we were striking the
10 jury. My wife, Emily Rhodes, just took a
11 job in the admissions office at
12 Huntingdon where this juror works so she
13 knows my wife, and Mr. Hartley may need
14 to make a record about that.

15 MR. HARTLEY: Yeah, we need to
16 get that on the record. Bring him on as
17 soon as you can.

18 THE COURT: Okay. Mr. Joyce
19 has rejoined us. I understand that Ms.
20 Catching works at the admissions office
21 in Huntingdon with Mr. Powell's wife.
22 Mr. Hartley, you want to followup?

23 MR. HARTLEY: Yes, Judge. Ms.
24 Catching, you now have -- we didn't
25 realize it because I think she has a

1 different last name because the lady you
2 work with and Mr. Powell but they are
3 married.

4 PROSPECTIVE JUROR: Right.

5 MR. HARTLEY: At least you know
6 about that last name. Have y'all become
7 friends? Have you and his wife become
8 friends at work? You know, get to know
9 each other better and better?

10 PROSPECTIVE JUROR: Well, it is
11 a small office but she has only been
12 there two weeks or about two weeks. So I
13 wouldn't say we were friends but we see
14 each other every day.

15 MR. HARTLEY: Now that you know
16 this information, would it be -- I just
17 need to ask. Could your association with
18 her in any way affect your verdict in
19 this case since, you know, the sort of
20 friendship with her might likewise be a
21 friendship with Mr. Powell. I realize
22 that you might say no but I am talking
23 about in the scheme of things, could it
24 affect your verdict in this case?

25 PROSPECTIVE JUROR: I don't

1 think so. Do I have to be absolutely
2 sure? I wouldn't think so.

3 MR. HARTLEY: Well, I would
4 like to ask it in the terms that I did
5 when I focused on that question a while
6 ago. What if it came down to a real,
7 real close case on the issue of guilt or
8 innocence, could it possibly affect your
9 verdict? And if your answer to that is
10 yes, please tell me. If the answer is
11 no, tell us the best you can.

12 PROSPECTIVE JUROR: No.

13 MR. HARTLEY: The answer is
14 no?

15 PROSPECTIVE JUROR: No.

16 MR. POWELL: No questions, Your
17 Honor.

18 THE COURT: Ms. Catching, let
19 me ask you something. Would you prefer
20 not to be on this jury because you are in
21 the same office with Mr. Powell's wife?

22 PROSPECTIVE JUROR: It makes me
23 a little uncomfortable.

24 THE COURT: Okay.

25 MR. HARTLEY: Judge, I think if

1 it makes her uncomfortable, I think
2 that's -- we have to move to make a
3 motion to strike her. And really, we do
4 respect her ability to serve.

5 THE COURT: I understand. I
6 wouldn't want to be in her predicament
7 either. I will grant your motion.

8 MR. HARTLEY: Thank you,
9 Judge.

10 THE COURT: You are excused,
11 ma'am, for the remainder of the day.
12 Thank you.

13 (At which time the jury was
14 struck, placed in the jury box, and the
15 following proceedings were held in the
16 presence and hearing of the jury.)

17 THE COURT: Before you sit
18 down, just raise your right hand. I'm
19 going to swear you in as the jurors.

20 (At which time the jury was
21 duly sworn.)

22 THE COURT: Be seated.

23 Obviously, you know y'all have been
24 selected as jurors in this case. The
25 first official duty will be to go to

1 lunch. I mean that. I'm just going to
2 let y'all go break for about an hour.

3 Before I let you go, let me
4 just tell you some do's and don'ts,
5 mostly don'ts, when you leave the jury
6 box. Don't discuss this case with
7 anybody. Don't let anybody discuss the
8 case with you. Don't even discuss it
9 with each other. The reason we say that
10 is when you go back here in the jury room
11 to decide the guilt or innocence, we want
12 everybody to start at the same place.
13 And if some of y'all have had discussions
14 about the case with anybody for any
15 reason, you are not all starting at the
16 same place.

17 If you see me out in the
18 hallway, I'm not going to talk to you.
19 The attorneys, it's going to be the same
20 way. It is not that we are being rude.
21 We don't want there to be any contact.
22 We don't want there to be any -- make it
23 look like we are talking with you because
24 we want you to decide the case based
25 solely on what you hear in the witness

1 box and the evidence in the case.

2 So don't talk to anybody about
3 the case. Don't let anybody talk to
4 you. I will talk to you more when we
5 break for the day about newspapers and
6 that sort of thing. You know, don't go
7 get in your car and drive down to Smiley
8 Court and try to look at the scene of
9 where the shooting took place. Don't get
10 on the internet and try to look up any
11 legal terms or call your buddy who is a
12 lawyer or something like that and start
13 asking him technical, legal issues in the
14 case. Again, we want you to decide the
15 case solely on what you hear in this
16 courtroom. And if you are trying to do
17 any of that on your own, it means that
18 you are letting an outside influence come
19 in. We want you to be influenced only on
20 what you hear in this courtroom.

21 Having said all that, if y'all
22 will be back here at 1:45, we will get
23 started. Just for planning purposes, we
24 will probably go today to about 4:30 in
25 the afternoon. If we get to a natural

1 break right around then, that's when
2 we'll try to break. We'll try -- I will
3 let you know when we get back what time
4 we'll start back in the morning. I am
5 sitting here right now. I don't know
6 what my schedule is in the morning, but
7 hopefully we'll be able to start back
8 around 8:30 or 9:00 in the morning. If
9 you will just return to the jury assembly
10 room, we'll come get you at 1:45. Please
11 be prompt.

12 (Lunch Recess.)

13 (The following proceedings were
14 held outside the presence and hearing of
15 the jury.)

16 THE COURT: We are on lunch
17 break and a juror has come in and said he
18 needs to speak. Mr. Joyce isn't here.
19 We are just trying to find out right now,
20 with the consent of his attorney, what
21 the nature of the request is.

22 JUROR: It was brought to my
23 attention as I was leaving the courtroom
24 that the defendant's mother and I worked
25 at the same place a few years ago back in

1 the latter part of 1999 when I was
2 employed by the U.S. Postal office. Now,
3 I don't know how that will have any
4 bearing on the case or not, sir, but we
5 were not, as you would say, close or
6 anything like that. I just knew her from
7 seeing her at work.

8 THE COURT: Okay.

9 JUROR: That's about the basis
10 of it.

11 THE COURT: Why don't we -- we
12 will wait until Mr. Joyce gets here and
13 we'll take that up. Are you going to be
14 in the jury assembly room anyway?

15 JUROR: Yes, sir. That's where
16 I was headed back to now.

17 THE COURT: Okay. We'll just
18 come and get you and talk about it when
19 you get back. Thank you for letting us
20 know that.

21 JUROR: Thank you, sir.

22 THE COURT: Thank you, sir.

23 (Brief Recess.)

24 THE COURT: Before we get the
25 jury back in here -- where did Will go?

1 We had a juror come in and say that he
2 knew Mr. Joyce's momma when he worked at
3 the post office. The record will speak
4 for what he actually said, but does
5 anybody have anything to say about it at
6 this time?

7 MR. POWELL: Judge, I wouldn't
8 -- I was going to ask a couple follow-up
9 questions. I don't think I have a
10 problem with it but I just wanted to -- I
11 thought the way you addressed it before
12 made it sound like you wanted to wait
13 until the defendant was here before we
14 probed into it.

15 THE COURT: Yes. I didn't know
16 you wanted to probe. If you want to
17 probe --

18 MR. POWELL: Just briefly. I
19 don't think I'm going to have a problem
20 with it, but the indication he gave us
21 earlier was they just had brief contact
22 and he knew who she was and it took him a
23 little while to realize she was that same
24 person he worked with in '99 or '96,
25 whenever it was. But I just want to make

1 sure -- if that's the extent of it, I
2 don't have any problem. I just need to
3 put that on the record.

4 THE COURT: Let me also say for
5 the benefit of those people here in the
6 courtroom that I understand there has
7 been some jawing back and forth between
8 the families. I am not going to tolerate
9 it. We are going to run this trial
10 smoothly. We are going to get through
11 this thing without any fights breaking
12 out.

13 If anybody has a problem with
14 that, they need to leave now because I
15 won't hesitate to hold somebody in
16 contempt of Court if they start causing
17 an uproar or commotion in this courtroom
18 or out in the hallway.

19 (At which time the juror
20 returns to the courtroom.)

21 THE COURT: I think some of the
22 lawyers may want to ask you a few
23 questions. We just wanted to wait until
24 we had everybody here.

25 MR. POWELL: More specifically,

1 where did you know Ms. Joyce from, the
2 defendant's mother?

3 JUROR: At the postal service.

4 MR. POWELL: How long had you
5 been working there?

6 JUROR: I started with the
7 postal service in '89. I started out in
8 the general facility in 1991.

9 MR. POWELL: What was your job
10 there at the time?

11 JUROR: I was a mail handler.

12 MR. POWELL: You were a mail
13 handler at the time. What was her job?

14 JUROR: I think she might have
15 been a clerk or something of that
16 magnitude.

17 MR. POWELL: And how often did
18 y'all see each other or come into contact
19 with each other?

20 JUROR: No more than clocking
21 in and clocking out. Just see each other
22 in the hallway and things such as that.

23 MR. POWELL: And y'all didn't
24 know each other like didn't see each
25 other at a barbecue or at church or

1 anything like that?

2 JUROR: Nothing. Just work.

3 MR. POWELL: Just from work
4 strictly?

5 JUROR: That was it.

6 MR. POWELL: Did y'all have
7 lunch breaks or anything? Were y'all in
8 the same work room or anything like
9 that?

10 JUROR: No.

11 MR. POWELL: Would the fact
12 that you know Ms. Joyce influence you in
13 favor of her son or make you feel awkward
14 about sitting on this jury or anything
15 like that?

16 JUROR: Well, it is -- actually
17 the evidence itself would make my
18 decision for me.

19 MR. POWELL: Do you still work
20 with Ms. Joyce?

21 JUROR: No. I'm with the State
22 of Alabama at this time.

23 MR. POWELL: You have a
24 different job now?

25 JUROR: Yes.

1 MR. POWELL: And I'll ask you:
2 How did you come to realize -- put the
3 pieces together that this lady was the
4 same one you might have worked with
5 earlier?

6 JUROR: Well, as I said, when I
7 was going to lunch, I -- we spoke to one
8 another and I remembered her from being
9 at the postal service and she reminded me
10 -- she mentioned to me the fact that
11 that was her son that was on trial at the
12 time.

13 MR. POWELL: Ms. Joyce actually
14 addressed that to you?

15 JUROR: Yes.

16 MR. POWELL: Did she approach
17 you or did you approach her?

18 JUROR: No. We just spoke to
19 one another as we were leaving the
20 courthouse grounds.

21 MR. POWELL: And she mentioned
22 that that was her son?

23 JUROR: Right.

24 MR. POWELL: And that's how you
25 became aware of it?

1 JUROR: Right.

2 MR. POWELL: Until that point,
3 you didn't have any independent
4 recollection of it?

5 JUROR: None whatsoever.

6 MR. POWELL: Nothing further,
7 Judge.

8 THE COURT: Thank you, sir.
9 Just go back in the jury assembly room.

10 MR. POWELL: Judge, the state
11 doesn't have a problem with that juror.

12 THE COURT: Okay.

13 MR. POWELL: We would ask for
14 an instruction.

15 THE COURT: Yes. Ms. Joyce,
16 you are not to talk to any jurors, make
17 eye contact with them. That goes for
18 anybody in this courtroom. Nobody is to
19 talk to a juror in this courtroom. You
20 are not to speak to them in the hallways,
21 out on the street. I don't want anybody
22 making eye contact. You don't wave. You
23 don't acknowledge that you even know them
24 or you don't acknowledge that you see
25 them.

1 We were going to have a fair
2 trial in this case. If anybody has a
3 problem with that, let me know now.

4 Richard, will you tell Jason to
5 go ahead and bring the jury back. I
6 assume nobody has a problem with the
7 issue about the jury?

8 MR. HARTLEY: No, Your Honor.

9 (Brief Recess.)

10 (At which time the jury enters
11 the courtroom.)

12 THE COURT: Be seated
13 everybody. Before we get started, ladies
14 and gentlemen of the jury, let me just
15 sort of tell you a little bit about what
16 we are going to be doing this afternoon.
17 I will explain everybody's role in this
18 trial to you. Let me start with my own
19 role.

20 I sort of see my role as like a
21 referee in a football game. I don't have
22 a dog in the fight. I don't really know
23 a whole lot more about the case than
24 y'all do at this point. My job is to
25 make sure it is a fair trial for

1 everybody. My job is when someone makes
2 an objection, I will rule on whether the
3 objection is well-founded or not.

4 Please, when you are sitting over there,
5 don't worry about why the judge did what
6 he did. Don't sit there and worry about,
7 well, if that evidence had come in, what
8 would the witness have said or -- because
9 that gets into the realm of speculation.
10 We want you to decide the case based on
11 what you hear from the witness stand.

12 At the end of the case, I will
13 tell you what the law in Alabama is that
14 governs this case. What is your role?
15 Your role is to sit and listen to the
16 evidence, and you hear the testimony of
17 the witnesses. You look at the exhibits
18 that we might let into evidence. From
19 that, you determine what the true facts
20 are in the case. Then you take those
21 facts and the law of the case as I give
22 it to you and you reach a verdict in the
23 case.

24 Here is how we are going to
25 proceed in this case. Each party will

1 get up and give an opening statement.
2 The prosecution goes first because they
3 have the burden of proof in the case.
4 They will tell you what they think the
5 evidence in the case will show. The
6 defense attorney, Wiley Hartley, he will
7 do the same.

8 After the opening statements,
9 the state will begin presenting its
10 case. When the state rests its case, the
11 defense will put on their case. And
12 following the presentation of the
13 evidence, the lawyers will be able to
14 give what is known as closing arguments
15 and that's where they try to sum up the
16 evidence and persuade you that you should
17 either acquit or convict in this case.

18 Again, the state goes first in
19 the closing arguments and they get a
20 little rebuttal. Again, that's because
21 they have the burden of proof in the
22 case. After they finish their arguments,
23 I will tell you again what the law is in
24 this case.

25 I have talked a lot about

1 evidence. So let me go over with you
2 what is evidence in the case and, again,
3 by telling you really what is not
4 evidence. Anything I say in this case is
5 not evidence. Anything the lawyers say
6 in this case is not evidence. Evidence
7 is what you hear from this witness stand
8 by people who are under oath. It is also
9 any exhibits that we'll allow into
10 evidence. It is also any presumptions of
11 law in the case. I will tell you right
12 now that a presumption of law in this
13 case is that the defendant is presumed
14 innocent and that presumption stays with
15 the defendant until you reach your
16 verdict, and that is considered as
17 evidence in the case.

18 As I told you this morning,
19 we'll be trying to take breaks every
20 forty-five minutes to an hour. If you
21 need a break before that, just raise your
22 hand and let me know -- or Judy Shelton
23 is my court reporter, or one of the
24 deputies. Just let us know. We'll try
25 to work with you any way that we can.

1 As I also said, we'll probably
2 be trying to take a break about 4:30 this
3 afternoon and come back in the morning.
4 Again, just listen to the evidence.
5 Don't discuss the case with anybody.
6 Don't let anybody discuss the case with
7 you. Okay? We'll get started.

8 MR. POWELL: May it please the
9 Court, counsel. Members of the jury,
10 back on Friday night, February 1st of
11 last year, right around 11:00, two men
12 were at a party over at Smiley Court.
13 They had been having words with each
14 other all night long until finally they
15 ended up between two of the apartments.
16 And after just some more words passed, no
17 fighting, nothing but words, this
18 defendant pulls out a handgun and shoots
19 at least three times striking James
20 Friendly in the side, in the leg, and in
21 the rear end. He eventually died from
22 those gunshot wounds.

23 That's what we are here about
24 today. The defendant is charged with
25 murder in the State of Alabama. Again,

1 my name is Will Powell and along with my
2 co-counsel, Ms. Vernetta Perkins, we are
3 representing not only the State of
4 Alabama here in this courtroom here today
5 but also James Friendly. James didn't
6 just go by James. He also had another
7 name. You are going to hear a lot of
8 people refer to him as Boo, B-O-O. If
9 you hear somebody refer to somebody named
10 Boo, they are talking about the victim,
11 James Friendly.

12 Sitting here with us is his
13 momma, Ms. Sally Friendly. Now, the
14 Friendlys don't live in Smiley Court
15 where this happened. They live over off
16 the Boulevard, over off Fleming Road.
17 James just ended up in Smiley Court
18 because he knew somebody who knew
19 somebody who was at the party. Then he
20 comes across the defendant in this case.

21 Who was he? What are you going
22 to learn about the defendant? You are
23 going to learn that the defendant was at
24 this party and he shot a man to death
25 over nothing but a meaningless argument.

1 Now, in his mind, the argument might have
2 had some meaning, but I think the
3 evidence is going to be that it wasn't
4 threats. It wasn't pushing or shoving.
5 It was just an argument over who was
6 better or badder than who, and he decided
7 he would win the argument by making the
8 decision to pull out a gun and fire it,
9 not once, not twice, but at least three
10 times striking the victim, striking James
11 Friendly and killing him dead.

12 Now, before we go any further,
13 let's talk for a minute about the crime
14 of murder in the State of Alabama.
15 Specifically, the defendant is charged
16 with the crime of intentional murder.
17 Now, when you hear intentional murder, a
18 lot of people think, well, some planned
19 out elaborate scheme where someone makes
20 a decision in advance and does all these
21 things leading up to it. That is very
22 easily a manner of intentional murder.

23 But in the State of Alabama,
24 all the state is required to prove the
25 crime of intentional murder is that the

1 defendant made up his mind to kill the
2 victim. That's it. We don't have to
3 prove some elaborate, well thought out
4 scheme. That's one way we could prove
5 it. But all we have to prove is that he
6 made the decision, a clear decision to
7 reach into his waist band -- first off,
8 it started before that, to arm himself
9 that night, to go to this party with a
10 gun. Then over words, over just an
11 argument, he made the decision to go for
12 that gun, to pull it up, to point it and
13 pull the trigger not one time, not two
14 times, but at least three, if not more
15 times.

16 We are going to submit to you,
17 members of the jury, that when you have
18 heard all the state's evidence in this
19 case, that act alone of making that
20 decision, even if it was, so to speak,
21 spur of the moment is enough to
22 constitute intentional murder in the
23 State of Alabama.

24 The focus is that the decision
25 was made, the intent was formed out there

1 between those two buildings that night to
2 pull that gun and to use it, and it ended
3 a man's life.

4 Now, what are you going to hear
5 about? What is going to be the evidence
6 that is presented to you in this
7 courtroom this afternoon and tomorrow?

8 First, you are going to learn this was a
9 birthday party. An individual by the
10 name of Christopher McQueen or Flip had
11 just had a birthday and they were having
12 a party for him over at Nicole Judkins'
13 house. They didn't really see much and
14 they didn't know a whole lot about what
15 was going on. That's just where the
16 people were gathering over in Smiley
17 Court that night.

18 The defendant arrived in a blue
19 pickup truck. He arrived with an
20 individual named Antwan Giles. They get
21 to the party and they start milling
22 around. They go into the apartment where
23 the party is. There are other apartments
24 close by. They are going across the
25 street.

1 Well, in the meantime, the
2 victim is there, Boo, and other people
3 are there. They are mingling and having
4 a big time until finally the two men's
5 paths cross because of a very key
6 individual in this trial. His name is
7 Eric Stewart, also known as Rabbit.

8 Rabbit was hanging out with Boo
9 and they see James Friendly. I think
10 Rabbit is even going to testify that he
11 and Boo were trying to figure out a way
12 they could find some cocaine and get
13 high. I think they will tell you that
14 this was a party. They had been drinking
15 and they were looking for some cocaine.

16 And while they were in this
17 process, they kept bumping into the
18 defendant and they kept having words with
19 each other. They weren't arguing over
20 the cocaine. They were just arguing over
21 I could do this to you, you could do that
22 to me. Over nothing is what it amounts
23 to. Kind of a bad, bad Leroy kind of an
24 argument and it just went on.

25 Finally, Mr. Stewart was like,

1 look, look, it don't have to go like
2 this. Let's just have another drink and
3 just let this go, and it died down. So
4 he goes in the house, in the apartment.
5 Comes back out with a drink. He and Boo
6 are standing there. They decide they are
7 going to go around the side and drink the
8 beer or do the cocaine or whatever.

9 Only the defendant is there and
10 the argument starts again. Eric Stewart
11 is right there. He is right there in the
12 middle of it. There is a witness
13 standing from me to y'all about what is
14 going on.

15 Now, let me just say this about
16 Mr. Stewart. You may not like him. He
17 is not a -- this is not a popularity
18 contest, and he will be the first to tell
19 you he has picked up drug charges being
20 they were out trying to do cocaine that
21 night. We are dealing with people at
22 this party that have a history, but these
23 are just the cards that have been dealt.
24 That's who was standing there when the
25 shooting occurred. So just keep that in

1 mind as you are listening to Mr. Stewart
2 or Rabbit's testimony. We are not asking
3 you to like him. We are asking you to
4 listen to him and evaluate his testimony
5 with all of the other testimony in the
6 case to determine whether or not this
7 defendant committed this murder.

8 Now, Mr. Stewart, Rabbit, is
9 going to tell you, as the argument
10 continued, the defendant, who he was
11 standing right there, just pulls out a
12 gun and ends it. Ends the argument by
13 shooting, pow, pow, pow, pow. Bullets
14 not only hit Mr. Friendly, but they also
15 hit a red Jeep Cherokee that is backed
16 into a parking place.

17 Like this is the parking lot
18 and there is an apartment building there
19 where the party is there and there is
20 another apartment building there. That
21 Jeep is just backed right there with the
22 back of that Jeep facing the area where
23 these men are standing. Other people are
24 milling around. But it was Joyce and it
25 was Friendly that were having an

1 argument, and Stewart was standing right
2 there.

3 Now when that bullet hit that
4 Jeep, there were two other people in that
5 Jeep. One's name is Johnny Osborne and
6 the other one's name was Brian Osborne.
7 They had been at that party. I think the
8 Osbornes will tell you they were sitting
9 there getting ready to roll a joint when
10 something hits their Jeep that they are
11 sitting in. So Johnny Osborne gets down
12 but Brian Osborne almost sticks his head
13 out the window to look back to see what
14 -- who is getting hit or where the shots
15 are coming from.

16 He looks back. We think the
17 evidence is going to be he is going to
18 tell you he saw that man right there
19 shooting James Friendly. He saw the
20 defendant shooting Boo. Saw the fire
21 from the gun. So that's two eye
22 witnesses.

23 Now the police get there and
24 there is not a whole lot of a crime
25 scene. Basically, you got a grassy area

1 in between two parking lots. They took
2 some pictures of it but they are not that
3 great of pictures, but you get to see
4 them. They also picked up three shell
5 casings from the grounds. And the body
6 -- they did an autopsy on it. There
7 were three injuries to the body.

8 Now maybe some other shots were
9 fired. Some people say they heard four
10 or five shots but the police only found
11 three shell casings. The department and
12 ballistics experts looked at them, people
13 that worked all their lives with them.
14 The three shell casings match each
15 other.

16 That's all they can tell you
17 about those shell casings. But that's
18 important because it does mean there was
19 one gun that left physical evidence at
20 that crime scene, not two guns, not three
21 guns, but one single gun. We submit to
22 you it was the defendant's gun. There
23 were nine millimeter shell casings that
24 were picked up, that ballistics indicate
25 most likely came from a Hot Point, a name

1 of a gun, a type firearm or handgun. The
2 slug that was taken, one of the bullets
3 that went through his chest or his
4 abdomen and then another bullet went
5 through his lower -- a little lower down,
6 and that's the bullet they were able to
7 recover. We think the medical evidence
8 is going to be -- those gunshot wounds
9 inflicted by the defendant killed James
10 Friendly.

11 That's in addition to having a
12 medical examiner. You can also use your
13 common sense. Someone shot three times,
14 twice across the gut. There is a good
15 chance that's what killed him, and it
16 was. So that's going to be the state's
17 case.

18 You have got eye witness
19 testimony. That eye witness testimony
20 all points to one person, the defendant.
21 You have got that eye witness testimony
22 corroborated by physical evidence, shell
23 casings from one gun, the autopsy
24 report. All of this evidence, when taken
25 as a whole, tells the exact same story.

1 It tells the story of Darryl Joyce
2 pulling a gun, pointing it at James
3 Friendly and deciding to intentionally
4 pull that trigger at least three times
5 killing him dead.

6 Now we feel confident that
7 after you have seen the physical
8 evidence, seen the photographs, heard
9 from the eye witnesses, we feel confident
10 that you are going to return a verdict of
11 guilty, that this man sitting in front of
12 you today shot James Friendly in that
13 grassy area between those two apartments
14 over nothing, over nothing, or at least
15 not anything somebody should die for.
16 Thank you.

17 THE COURT: Mr. Hartley.

18 MR. HARTLEY: Yes, sir. Judge,
19 counsel, good afternoon members of the
20 jury. I'm John Hartley and I have been
21 practicing here for a lot of years in
22 Montgomery. I do these kinds of cases as
23 part of my professional career, I guess
24 you would say. I'm representing Darryl
25 Joyce and will assist in putting on his

1 defense today.

2 Mr. Powell and I have tried a
3 few cases against each other and we know
4 each other real well. We just see a
5 different perspective on this case, with
6 due respect to him, and I think he
7 understands that there is a difference --
8 there is a difference, two sides to this
9 story. There is more to this than what
10 was told to you. I want to just say that
11 the judge emphatically told you about the
12 presumption of innocence and how it rises
13 to the level of evidence in this case.

14 You have also been told in
15 either the form of questions or directly
16 that the state has got the burden of
17 proof and they have got to prove my
18 client guilty beyond a reasonable doubt.
19 I submit to you they will not be able
20 to. I will not make a lengthy opening
21 statement. I think a lot of this case
22 will come out in cross-examination.

23 But there is going to be some
24 stuff that Mr. Powell didn't tell you
25 about. I will get to a few particulars

1 in just a moment. First of all, I want
2 to emphasize to you, and this has already
3 been -- you are going to have to take it
4 -- kind of what the circumstances were
5 on that night as to how good this eye
6 witness's testimony that Mr. Powell talks
7 about is going to be in this case.

8 I think they are going to show
9 you some slides that portray the scene.
10 They were taken in the daytime. This all
11 happened at night in the middle dark part
12 of the apartments, late enough where
13 there would be no natural lighting. This
14 didn't happen in the daytime. It
15 happened close to midnight on February 1,
16 2002. There were a number of people out
17 there. This was an ongoing birthday
18 party as Mr. Powell mentioned to you.
19 But I think it is going to come across --
20 you know, a broad view of the testimony
21 and the evidence in this case is that the
22 people that are implicating my client are
23 actually -- I'm going to say friends --
24 they are actually covering for another
25 individual. They are covering for Darryl

1 Foggy who we submit to you is going to be
2 the real or the specific person who shot
3 James Friendly, if anyone can be
4 identified. It was Darryl Foggy who was
5 physically present out there and whose
6 name comes up several times during this
7 case.

8 The illogical part for Mr.
9 Powell is that my client didn't have any
10 beef with James Friendly. If he didn't
11 know the man, he didn't have any reason
12 to be out there arguing with him and
13 fighting with him.

14 Now what happened between
15 Darryl Foggy and James Friendly is beyond
16 us. Some of it may come out during this
17 case but it is something that -- there
18 was no way to go back and reconstruct
19 exactly what happened that night. We can
20 only go through the testimony and see
21 what can be pieced together about it.
22 But we are going to find that there is a
23 loyalty or sort of a tightness between
24 Eric Stewart, Darryl Foggy and possibly a
25 man named Brian Osborne. And we are

1 going to submit to you that they are
2 trying to put this on Darryl Joyce
3 because he wasn't one of their little
4 tight-knit group, their clique, whatever
5 you want to call it. He really didn't
6 even know the man. I think he came there
7 with Antwan Giles.

8 As Mr. Powell has said, there
9 was a pretty big function and some people
10 just came there. They heard about it or
11 there was something going on and it just
12 drew a crowd. But the most remarkable
13 thing you are going to find in this case
14 is that there is eye witness testimony.
15 Then there is a witness who was
16 identified by Bryant Thomas, and on the
17 -- when he was identified by the police
18 -- I mean when Bryant Thomas was
19 interviewed by the police, when he was
20 first asked who it was, he was shown a
21 photo lineup and identified Darryl Foggy
22 as being the shooter. That's reflected
23 in Mr. E.E. Howton's report that he made
24 in the police files. Whether or not he
25 sticks to that story now, we don't know

1 but he did that night. He first said
2 it.

3 That's the first he -- and he
4 was looking at a photo array, a lineup of
5 people -- they have what they call a
6 photo lineup and he specifically
7 identified Darryl Foggy as the person who
8 shot him. The story gets even more
9 convoluted involving Darryl Foggy that
10 night. Eric Stewart was the witness that
11 Mr. Powell described as being so close.

12 Now, his motive for this, we
13 will have to figure it out as we go
14 along. But he took Darryl Foggy's gun
15 away from the scene and hid it in an
16 apartment not far away. And since that
17 time, I think the same detective may have
18 led through this part of the
19 investigation. They went -- the
20 information became available and they
21 went to that apartment, found the gun and
22 recovered it. It is going to be in
23 evidence in this case.

24 What is important about that?
25 Eric Stewart was in the police station

1 that morning giving statements. He gave
2 one about -- I'm just going to say about
3 3:00 that morning and another one about
4 7:00 in the morning. He gave kind of a
5 statement to the police about what had
6 happened the night before trying to
7 implicate Darryl Joyce, but he never told
8 the police that morning that he was
9 hiding a gun or had hid a gun for Darryl
10 Foggy. But the report reflects after he
11 gave these two statements when they were
12 a couple hours apart, they kind of
13 overlap, I guess, in some of the
14 details. But nowhere in those statements
15 where he was talking to the police did he
16 disclose that he had hidden a gun in the
17 last couple of hours. But it says in
18 there that at 8:00 he starts telling them
19 about where a gun had been.

20 I bring that to your attention
21 because -- to tell you that the evidence
22 is going to show that Eric Stewart is
23 very loyal to Darryl Foggy if he would go
24 hide a gun right after an incident like
25 this took place. So this is where the

1 evidence is going to become unclear. And
2 Mr. Powell said -- he said it was going
3 to be so clear that at the end of the
4 state's evidence, the finger is going to
5 be pointed at Darryl Joyce.

6 Well, I ask the question why
7 don't we have a photo lineup that shows
8 Darryl Joyce. I submit to you if I had
9 looked at this record closely, there's
10 nowhere where anybody correctly
11 identified Darryl Joyce from a photo
12 lineup or specifically picked him out as
13 being the one. So we go back now to who
14 is really telling the truth and what the
15 deal on this is. It is going to leave
16 some doubt. We will submit to you there
17 is going to be reasonable doubt and the
18 state cannot prove beyond a reasonable
19 doubt Darryl Joyce's guilt. Mr. Powell
20 has made the statements Darryl Joyce did
21 this and Darryl Joyce did that. He
22 doesn't know. He wasn't out there. He
23 is just relating to you what he hopes he
24 can prove. Then you will have to take
25 into your own concept of this case the

1 overall circumstances.

2 It was dark, nothing but
3 artificial lighting. A lot of people
4 were drinking and on drugs and then the
5 issue of who would taint or slant their
6 testimony. When all that is blended
7 together, I submit to you we may never
8 solve in this courtroom today or tomorrow
9 who shot Mr. James Friendly. Thank you.

10 THE COURT: Call your first
11 witness.

12 MR. POWELL: The state calls
13 Eric Stewart.

14 ERIC STEWART,
15 having been first duly sworn, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. POWELL:

19 Q. Mr. Stewart, if you would scoot
20 up for me. Speak into this microphone so
21 all the jury can hear you. All right.
22 First off, state your name for the
23 record.

24 A. Eric Stewart.

25 Q. Mr. Stewart, do you have a

1 street name or something you go by other
2 than Eric Stewart?

3 A. Yes.

4 Q. What is that?

5 A. Rabbit.

6 THE COURT: So most people that
7 see you, what are they going to call
8 you?

9 THE WITNESS: Rabbit.

10 Q. Where do you live?

11 A. 403-A Marlyn Street.

12 Q. Marlyn Street?

13 A. Yes.

14 Q. And where is that area here in
15 Montgomery?

16 A. That's the Smiley Court area.

17 Q. You live over in Smiley Court?

18 A. Yes.

19 Q. Now, do you currently have a
20 job?

21 A. No, sir.

22 Q. Have you had a job in the past?

23 A. Yes.

24 Q. What kind of things have you
25 done in the past?

1 A. Detailing cars.

2 Q. Detailing cars and that kind of
3 stuff?

4 A. Yes, sir.

5 Q. All right. Now, bring your
6 attention back to February the 1st of
7 last year. Do you recall that date?

8 A. Yes, sir.

9 Q. Do you recall a party that was
10 going on that night?

11 A. Yes, sir.

12 Q. Whose party was it?

13 A. My cousin, Chris McQueen.

14 Q. Christopher McQueen is your
15 cousin?

16 A. Yes.

17 Q. What does he go by usually?

18 A. Flip.

19 Q. Where was the party being held?

20 A. At 432 Marlyn Street.

21 Q. Who lives there, if you know?

22 A. My cousin and his girlfriend
23 Nicole.

24 Q. Nicole?

25 A. Yeah.

1 Q. What is her last name?

2 A. I'm not sure. Johnson or
3 something like that.

4 Q. But you are having a party for
5 your cousin Flip over at Nicole's house?

6 A. Yes.

7 Q. How did you learn about this
8 party?

9 A. My cousin told me.

10 Q. And were you invited basically?

11 A. Yes.

12 Q. What time did you go over to
13 the party?

14 A. Came about 9:30, 10:00.

15 Q. How many folks were there once
16 you got there?

17 A. About thirty.

18 Q. About thirty people?

19 A. Yes.

20 Q. And how would you -- describe
21 the apartment for us. What did it look
22 like over there in Smiley Court?

23 Describe the apartment where they were
24 having the party.

25 A. Oh, the apartment. Like I

1 said, it was like a lot of people against
2 the walls. There were no chairs -- a
3 couple chairs there.

4 Q. Did they have drinks or food or
5 anything like that?

6 A. They had food.

7 Q. What?

8 A. We had beer, liquor like.

9 Q. Inside the apartment?

10 A. Yes. Inside.

11 Q. So if you wanted a drink you
12 would have to go inside?

13 A. Yes.

14 Q. And there were people inside?

15 A. Yes.

16 Q. Music, I take it?

17 A. Yeah. There were some music.

18 Q. Smoking and that kind of stuff?

19 A. Yes.

20 Q. Just your basic party?

21 A. Yes, sir.

22 Q. And were there people also
23 outside?

24 A. Yes, sir.

25 Q. What was it like outside that

1 night?

2 A. Like people standing on the
3 porch. People like in the yard by the
4 mail box and stuff. People walking past.

5 Q. Were there any street lights or
6 porch lights or anything like that?

7 A. Yes. She had a porch light on.

8 Q. A porch light?

9 A. Yeah.

10 Q. Now what was between the two
11 apartment complexes? Were there any
12 lights or --

13 A. No, sir, no lights.

14 Q. Could you see?

15 A. Yes, you could see.

16 Q. Do you remember what the
17 weather was like that night?

18 A. It was cold. It was cold.

19 Q. It was cold being back in
20 February?

21 A. Yes.

22 Q. Do you remember whether the
23 moon was out?

24 A. No, sir.

25 Q. If I am where I am and you were

1 where you are, would you be able to see
2 me out in between those two apartments?

3 A. Yes, sir.

4 Q. So you could see some things?

5 A. Yes.

6 Q. Now do you know the defendant
7 in this case?

8 A. Yes.

9 Q. How do you know him?

10 A. We went to Turner School
11 downstairs together.

12 Q. What about James Friendly, do
13 you know him?

14 A. Yes.

15 Q. How?

16 A. His girl stay upstairs from me.

17 Q. So you are familiar with him
18 and you knew a lot of other people at
19 this party?

20 A. Yes, sir.

21 Q. Did you know someone there
22 -- the defense has made a reference to
23 Darryl Foggy.

24 A. Yes.

25 Q. How did you know him?

1 A. I growed up with Darryl Foggy.

2 Q. Did you see him at the party
3 that night?

4 A. Yes, he was.

5 Q. Now, when was the first time
6 you saw James Friendly that night?

7 A. When I came outside from the
8 party, he was standing on the porch.

9 Q. How long had you been there?

10 A. Been there like an hour or so.

11 Q. Had you had anything to eat or
12 drink?

13 A. Yes, I had something to drink.

14 Q. What?

15 A. A couple beers and a shot of
16 liquor.

17 Q. So is it safe to say you had
18 about three drinks at that point?

19 A. Yes.

20 Q. Give or take about?

21 A. Yes.

22 Q. So you walked outside and
23 that's the first time you saw James
24 Friendly?

25 A. Yeah.

1 Q. Where was he?

2 A. Standing on the porch.

3 Q. Now when you saw James on the
4 street, what would you call him?

5 A. Boo.

6 Q. That was his name?

7 A. Uh-huh (indicating yes).

8 Q. And you are Rabbit. Now we got
9 a Rabbit and a Boo out in front of the
10 apartment?

11 A. Yes, sir.

12 Q. And that's the first time you
13 had seen him that day?

14 A. Yes, sir.

15 Q. Do you have any idea how Boo
16 got to the party?

17 A. No, sir.

18 Q. What did you do once you saw
19 Mr. Friendly?

20 A. We shook hands. He said he
21 just got out of jail. We were in the
22 city jail together.

23 Q. That's the last time you saw
24 him?

25 A. Yes, sir.

1 Q. And that's the first time y'all
2 had seen each other since y'all got out
3 of the city jail?

4 A. Yes.

5 Q. What have you been locked up
6 for?

7 A. I was in the city jail for
8 domestic violence.

9 Q. You got into a fight with your
10 girlfriend?

11 A. Yes, sir.

12 Q. Have you ever been locked up on
13 any --

14 A. I went to prison for possession
15 of cocaine.

16 Q. Cocaine possession?

17 A. Yes, sir.

18 Q. Anything else?

19 A. No, sir.

20 Q. And other than the time y'all
21 spent over at the city jail, did you know
22 James Friendly before that?

23 A. Yes.

24 Q. How?

25 A. Like I said, his girlfriend was

1 staying upstairs. He would hang out with
2 my brother a lot. Me and him met and we
3 would hang out.

4 Q. Now what happened after you
5 hooked up with James at the party?

6 A. He asked me do I want to go get
7 high, and I said yes. And we went and
8 got something.

9 Q. When you say you got something,
10 what are you talking about?

11 A. A pile of cocaine.

12 Q. Now what happened after you got
13 that?

14 A. We got the pile of cocaine from
15 a guy and we went on the side of the
16 building to do it. He had gave it to me
17 first. He said, no, let me see it. He
18 takes it. It would be some cocaine.

19 Q. How much did you take, if you
20 know?

21 A. Just the taste. It wasn't like
22 a pile on your hand.

23 THE COURT: Are you talking
24 about you snorted a little of it or
25 what?

1 A. No. He tasted it.

2 Q. Just touched it to his tongue?

3 A. Yeah.

4 Q. How much did y'all buy or did
5 you get?

6 A. Spent fifty dollars.

7 Q. Fifty dollars worth of cocaine?

8 A. Yes.

9 Q. If you were holding it in your
10 hand, how much would it have been?

11 A. It would be a lot. It would be
12 like -- well, it would be a baggy like
13 this here.

14 Q. A little corner of a bag?

15 A. Yeah. It filled it up.

16 Q. And y'all were over there on
17 the side of the building?

18 A. Yeah.

19 Q. Then what happened?

20 A. He passed it to me.

21 Q. Then what did you do?

22 A. I snorted it.

23 Q. How much?

24 A. Like what you call a
25 two-on-two.

1 Q. What does that mean?

2 A. Both nostrils, yes.

3 Q. Now what happened after y'all
4 were around there on the other side of
5 the building?

6 A. Well, I be around there.

7 Poncho came on the side when we were
8 there.

9 Q. Now when you say Poncho, who
10 are you talking about?

11 A. Darryl Joyce.

12 Q. Do you see that person here in
13 the courtroom here today?

14 A. Yes.

15 Q. Would you point him out for the
16 jury?

17 A. (Witness complies.)

18 Q. Which one are you talking
19 about?

20 A. With the brown on it.

21 Q. Let the record reflect he has
22 identified the defendant. Now had you
23 seen this man before?

24 A. Yes, I saw him.

25 Q. Had you seen him at the party

1 before?

2 A. No, not the party.

3 Q. This was the first time you had
4 seen him at the party?

5 A. Yes.

6 Q. So what happened?

7 A. He walked -- me and him shook
8 hands. He was standing. I told him that
9 Boo was there. Then he shook hands.
10 Then we did -- all of us got to talking.
11 I guess they disagreed or something,
12 something, and they got in an argument.

13 Q. You were standing there when
14 they first came up?

15 A. What now?

16 Q. You were standing there when he
17 first came up?

18 A. Yeah, we were standing up.

19 Q. And he shook hands with you?

20 A. Yes.

21 Q. But he didn't act like he
22 wanted to shake hands with James
23 Friendly?

24 A. Yes.

25 Q. Do you know what that was

1 about?

2 A. No, sir.

3 Q. But did it look to you like
4 they had at least seen each other before?

5 MR. HARTLEY: Objection, Your
6 Honor, to the opinion or the subjective
7 answer of the witness.

8 THE COURT: He can tell what he
9 saw. Sir, repeat it.

10 Q. Mr. Stewart, from the way Mr.
11 Friendly -- or Mr. Joyce responded to Mr.
12 Friendly in shaking hands or not wanting
13 to shake his hand, did it look like from
14 where you were standing they had seen
15 each other before?

16 MR. HARTLEY: Judge, I object.

17 A. Yes.

18 THE COURT: Get him to tell
19 what he saw.

20 A. He look like he didn't
21 really --

22 MR. HARTLEY: He is not -- he
23 hadn't been asked a question yet. Mr.
24 Powell needs to rephrase the question.

25 THE COURT: Ask a question.

1 Q. Mr. Stewart, again, what
2 happened when Darryl Joyce -- after he
3 shook hands with you, did he shake hands
4 with James Friendly?

5 A. Eventually he did.

6 MR. HARTLEY: Only if he knows.
7 I think that requires a mental operation
8 or speculation.

9 THE COURT: Don't guess as to
10 something he is thinking. Just tell us
11 what you saw.

12 A. Well, the reaction with his
13 hand.

14 THE COURT: Reaction with his
15 hand?

16 A. His hand on the side and that's
17 it.

18 Q. Then what happened?

19 A. He spoke like he all right. He
20 shook hands and just put his hand back
21 down.

22 Q. Now, after that occurred, what
23 happened next?

24 A. We got to talking. Still
25 talking. Like I said, evidently they had

1 a disagreement on something and an
2 argument broke out.

3 Q. Before you get to the argument
4 what were y'all talking about?

5 A. Me and Boo --

6 Q. The three of you. Y'all are
7 standing there talking. You tell me.
8 Are you talking -- all three of you are
9 talking?

10 A. No. He was. Poncho was
11 standing. Me and Boo.

12 Q. Poncho is there. You are here
13 talking about the defendant?

14 A. Darryl.

15 Q. Poncho was just standing
16 there. What were y'all talking about?

17 A. Jail stuff, when we were
18 sitting in jail. Just kicking it.

19 Q. And he was listening?

20 A. Yeah.

21 Q. And then at what point did he
22 become involved in the conversation?

23 A. When everybody was joking about
24 Gibbs Village.

25 Q. Gibbs Village?

1 A. Yes.

2 Q. What about Gibbs Village? What
3 does that have to do with anything?

4 A. No. He was like -- it was like
5 mostly Smiley Court dudes in our cell.
6 And we were kicking like how we was
7 kicking it in jail like home boy Smiley
8 Court talking. But Boo would be with
9 us. You got your home boy. You know
10 what you're saying. You know what I'm
11 saying, he didn't want to talk because
12 you got the home boy and he was from
13 Gibbs Village.

14 Q. Now, who was it at Gibbs
15 Village?

16 A. Who lives in Gibbs Village?

17 Q. Who was running with Gibbs
18 Village?

19 A. Boo.

20 Q. That's James Friendly?

21 A. Yes.

22 Q. And who is running with Smiley
23 Court?

24 A. Me.

25 Q. Okay. And do you know anything

1 about the defendant?

2 A. He is from English Village.

3 Q. English Village?

4 A. Yes.

5 Q. Are you aware of any ongoing
6 dispute between Gibbs Village and English
7 Village?

8 MR. HARTLEY: Objection, Your
9 Honor.

10 THE COURT: I will sustain it.

11 Q. At that point when you were
12 talking about who is where, Gibbs
13 Village, Smiley Court, that's when the
14 defendant chimed in?

15 A. Yes.

16 Q. At that specific point?

17 A. Yes.

18 Q. Did he bring anything up before
19 you started talking about Gibbs Village?

20 A. No. He didn't say nothing at
21 first.

22 Q. That's when he jumped into it?

23 A. Yes.

24 Q. And then what happened?

25 A. He made a comment about niggers

1 THE WITNESS: Yes.

2 Q. How long did that go on?

3 A. This argument went on about
4 like ten minutes.

5 Q. They were going back and forth?

6 A. Yes.

7 Q. About who is their own man or
8 whatever?

9 A. Yeah. Who can hold their own
10 on the street or whatever.

11 Q. Who can hold their own on the
12 street?

13 A. Yes.

14 Q. That is what they were arguing
15 about?

16 A. Yes.

17 Q. Now what did you do?

18 A. I was telling them chill out.
19 I was inside of them. I was telling them
20 to chill out. I was telling them they
21 had a party. Don't spoil my cousin's
22 party. Just chill out.

23 Q. At that point had anyone
24 exchanged blows or jumping at the other
25 one or pushed or anything?

1 A. No, sir.

2 Q. Just talking?

3 A. It was just talking.

4 Q. Or arguing?

5 A. Yes.

6 Q. So after you jumped in, tried
7 to calm everything down, what happened?

8 A. It was calm down but -- they
9 was still mumbling like. So I said,
10 y'all show some love. At that point he
11 gave him a hand shake.

12 Q. So when you are referring to
13 show some love, you are talking about
14 shaking hands and making up?

15 A. Yes, sir.

16 Q. At least talking about it?

17 A. Yes.

18 Q. Did that happen?

19 A. Yeah, they shook hands.

20 Q. What is supposed to happen now?

21 A. He walked over to me and Boo
22 went back in front.

23 Q. And where did you go?

24 A. I was going to get a beer out
25 of the house, from the party.

1 Q. Did you do that?

2 A. Yes, I went and got a beer.

3 Q. At that point you left Mr.
4 Friendly alone out on the porch?

5 A. Yes.

6 Q. Is that correct?

7 A. He wasn't invited to the party.

8 Q. So he didn't feel comfortable
9 going inside the house?

10 MR. HARTLEY: Objection, Your
11 Honor. He is asking what Mr. Friendly
12 would be thinking.

13 THE COURT: Sustained.

14 Q. What happened when you came
15 back? Did you get a beer?

16 A. Yeah, I got a beer.

17 Q. What happened?

18 A. They bring the argument back
19 up.

20 Q. Who is arguing now?

21 A. Boo and Poncho.

22 Q. The same two before?

23 A. Yes.

24 Q. Same defendant that is sitting
25 over here?

1 A. Yes.

2 Q. And any doubt in your mind
3 that's the guy?

4 A. That's him.

5 Q. That's him?

6 A. Yes, sir.

7 Q. What was the argument going on
8 about this time when you came back out of
9 the apartment?

10 A. It was basically the same thing
11 about he was talking about earlier. I
12 heard James Friendly told him, man, I
13 ain't going nowhere. I saw you sleeping
14 on the porch, if I wanted to do something
15 to you.

16 Q. You heard the victim say that,
17 Mr. Friendly?

18 A. Yes.

19 Q. Said he had seen him before?

20 A. Yes. He was on the porch
21 sleeping in Smiley Court.

22 Q. Then what happened?

23 A. Me and Boo proceeded to go back
24 on the side where we was.

25 Q. What was the reason for that?

Part 2 of 5

DOCUMENT NAME:

Joyce, Darryl Jeon

CLIENT & MATTER:

58199-001

DESCRIPTION:

County: Montgomery

LWOP

CC#s: 2002-1417

Attorney: Jean Therkelsen

Circle: TRANSCRIPT CASE FILE BOTH

3 volumes
MMV

CERTIFICATION

I hereby certify that the preceding imaged records and documents
are a true, accurate, and complete image of the original records or
documents as received by the Office of the Attorney General of
the State of Alabama.

This the 19th day of January, 2005.

Signed: Melissa A. Martin

Notary: Coleen F. Gibson

Coleen F. Gibson
Notary Public
Commission expires 06/11/06